IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 9649 of 2007
DATE OF DECISION: 31.8.2007

M/s Nagesh Hoisery Exports Ltd.

…Petitioner

Versus

Director General of Foreign Trade, New Delhi and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Jagmohan Bansal, Advocate,
for the petitioner.

Mr. Sanjeev Kaushik, Advocate,
for the respondents.

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution prays for quashing minutes of 'Norms Committee Meeting' dated 22.3.2007 (P-12), order dated 9.9.1991(P-7) and order dated 7.6.1999 (P-9), passed by respondent No. 1. Respondent No. 1 has reduced import entitlement of the petitioner and directed it to deposit duty and interest. A further prayer for quashing order dated 28.5.2007 (P-13) has also been made by which respondent No. 2 has advised different

authorities not to allow any incentive to the petitioner till further order. Still further a direction has been sought against respondent No. 2 to issue redemption certificate to the petitioner.

Brief facts may first be noticed. The petitioner, which is a public limited company, applied for advance licence under the provisions of the Exim Policy, vide application dated 20.7.1989 (P-1), declaring various items to be imported and product to be exported. Since in the process of manufacture of final product, some waste is generated the petitioner in respect of import of Taffeta fabrics declared waste as "Net to net as per policy". In November 1989, the petitioner started exporting goods on the basis of application filed with respondent No. 2. On 11.12.1989, advance licence No. 3310491, was issued by respondent No. 2 in favour of the petitioner thereby entitling it to import the following goods:

Name of item	Quantity	CIF Value
Polyester yard	49,000 (Kg.)	29,05,000
Zip Fastners	3,00,000 (Pcs)	9,90,000
Tafetta cloth	1,00,000 (Mtrs.)	15,00,000

The petitioner was to discharge export obligation as per stipulation made in the aforementioned licence that 'Cotton/Polyester velur readymade garments with zips and taffeta cloth and zips also to be fitted with cotton hosiery knitwears. The quantity of polyester yarn should not be less than 38490 Kg.' (P-2).

During November 1989 and December 1990, the petitioner exported 59 consignments of garments and used 81488 Mtrs. Taffeta fabrics in this process. The case of the petitioner

regarding partial import of goods and discharge of export obligation was placed before the Regional Advance Licensing Committee (for short 'ALC'), which approved the same in its meeting held on 12.11.1990.

On 29.12.1990, the petitioner requested respondent No. 1 to rectify the mistake occurred in its earlier letter dated 8.10.1990 in mentioning the quantity of resultant export product and intimated the correct quantity as 38490 Kgs. (P-4). On 9.5.1991, the petitioner imported 75358 Mtrs. Taffeta fabrics against bill of entry No. 390/45 (P-3). It is appropriate to mention here that till December 1990, the petitioner completed its export obligation but imported goods to the extent of 70% of their import entitlement. The balance quantity was likely to reach India by 25.5.1991 and validity period of licence was upto 31.5.1991 but due to gulf war supplier could not ship the goods. On 11.6.1991, the petitioner applied for revalidation of advance licence showing import and export obligation to be fulfilled as well as obligation actually fulfilled (P-5). The ALC in its meeting held on 9.9.1991, considered the matter and decided that quantity of Taffeta cloth be reduced to 39,000 mts. (@ 0.13 sq.m. per garment) from 1,00,000 mts. It is claimed that the question before the ALC was rectification of mistake of resultant product but not import entitlement of Taffeta fabrics and the ALC suo moto changed the norms and reduced the import entitlement of the petitioner. On 26.9.1991, respondent No. 2 communicated the views of the ALC to the petitioner (P-6 and P-7). On 14.5.1992, the Commissioner of

Customs-respondent No. 3 accepting that the petitioner has discharged its export obligation, issued 'no objection certificate' to respondent No. 2 (P-8). Despite 'no objection certificate' issued by respondent No. 3, respondent No. 2 issued a demand notice dated 7.6.1999 and directed the petitioner to deposit a sum of Rs. 15,49,366/- towards duty and Rs. 26,95,897/- towards interest (P-9). The petitioner approached respondent Nos. 1 and 2 for reconsideration of its case, inasmuch as, it had already discharged the obligation and it was not possible to comply with the demand notice. The matter was thereafter considered in the meetings held on 14.10.2004 and 3.8.2006 and the same was rejected (P-10).

At the insistence of the petitioner, respondent No. 1 sought clarification from respondent No. 2 and it was clarified vide letter dated 14.3.2007 that the petitioner has consumed more taffeta fabric in export product than imported. The case was recommended for regularisation by respondent No. 2 placing reliance on the 'no objection certificate' issued by respondent No. 3 (P-11). The operative part of this order makes interesting reading, which is as under:-

> " Further vide letter dated 1.11.2006 party has again submitted their representation pleading that their case may be once again looked into and considered favourably as they have completed the exports much before the decision of amendment made by the ALC i.e. M. No. 19/92 dated 9.9.91 (CASE No. T-425) and this office vide letter dated 15.11.2006 had forwarded the

copy of representation alongwith the statement of exports showing net contents of Taffeta cloth used in the export product exported reflecting on the both S/bills and as well as certified copies of C/A. (copy of letter enclosed). As earlier licence was issued for Tafetta cloth on net to net basis.

ALC in Meeting No. ALC No. 17/AM 2007 dated 3.8.2006 (Case No. 458) has taken the decision to finalized the case on the basis of qty of Tafetta Cloth already recommended by ALC.

Regarding action taken by this office the party was advised to pay customs duty and interest against excess import made of Taffeta cloth and also issued Demand Notice dated 7.6.99. This office has also issued number of reminders but till date they have not paid customs duty+ interest against excess import of Taffeta and claimed that they have fulfilled 100% E.O. and also exported 81488 Taffeta against imported 75348 Mtrs. hence no excess import comes according to firm. Customs authority vide letter No. S/16-DEEC-1383/87 GR-7, S/16-DEEC-1995/90 dated 14.5.92 had also given no objection Certificate of cancellation of the bond accepting the E.O. fulfilled in full Taffeta Cloth wise on net to net basis.

> In view of the above it is clarified that the exporter has consumed Taffeta cloth 81488 Mtrs in the export product, and imported less Taffeta cloth then consumed in export product. Therefore, it will only be appropriate to regularize the case at this belated stage in the interest of export promotion since exported Taffeta cloth has been duly accounted for."

Thereafter, the matter was considered in the meeting of the ALC held on 22.3.2007 and the case of the petitioner was rejected on the ground that the petitioner had approached respondent No. 1 belatedly. The decision as conveyed to the petitioner reads thus (P-12):-

> "Decision: The Committee considered the case as per agenda and observed that the Advance Licence in question is of 1989 and ALC has already cleared (?) in its meeting held on 09.09.1999 and subsequently, ALC has reviewed this case on 14.10.2004. Firm/RLA approached DGFT quite later in this matter. In view of this committee to reject the case. Firm may be informed accordingly.
>
> RLA may take suitable consequential action accordingly."

Feeling aggrieved, the petitioner has filed the instant petition challenging letters/orders as detailed in the first para of the judgment.

In the written statement the fact have not been disputed that the petitioner had already imported the Tafetta cloth before the amendment reducing Tafetta cloth from 1,00,000 mtrs. to 30,000 mtrs was incorporated in the advance licence on 9.9.1991. The petitioner had imported 75,348 mtrs Tafetta cloth against 1,00,000 mtrs. which was allowed on 4.3.1991 much before the decision of ALC on 9.9.1991 reducing the quantity of Tafetta cloth to 39,000 mtrs. It has, however, been claimed in para 13 of the written statement that the petitioner had given an undertaking on 25.3.1991 before imports to respondent No. 2 to the effect that legal undertaking shall be valid after all the obligations of the importer are fulfilled to the satisfaction of the Government. It has also been claimed in para 9 of the written statement that Commissioner of Customs-respondent No. 3 had inadvertently issued the 'no objection certificate' overlooking reduction in quantity of Tafetta cloth, which could not have been issued had they checked up the reduction in quantity and, therefore, the 'no objection certificate' (P-8) cannot be relied upon.

It is apposite to mention here that when the case came up for hearing on 5.7.2007, Mr. Jagmohan Bansal, learned counsel for the petitioner had placed firm reliance upon a Division Bench judgment of this Court rendered in the case of **Malwa Cotton Spinning Mills Ltd. v. Joint D.G.F.T., Ludhiana, 2003 (153) ELT 525** (P-14) and argued that the instant petition is squarely covered by the aforementioned judgment, inasmuch as, similar issues were also involved therein. In the aforementioned Division Bench judgment of

which one of us (M.M. Kumar, J.) is a member, the party was informed by the department that the product was covered by Sr. No. J50 of Standard Input Output Norms (SION) for textile. The petitioner before importing and exporting the products had obtained the annual advance licence and the classification was later on changed by taking the view that entry at Sr. No. J50 in the SION did not cover cotton nylon blended yarn and called upon the petitioner to pay duty on the material imported alongwith interest. This Court while noticing that the petitioner had complied with its obligations under the licence, the later changes would not affect the right of the petitioner for issuance of redemption certificate applied for by the petitioner. The department was, in fact, held to be estopped from taking the stand that the item was not covered by SION.

The facts in the present case are also similar as the petitioner has complied with the obligations of the licence. It is a different matter that on a later occasion the quantity of Tafetta cloth was reduced resulting in demand of the revenue, which would be hit by the principle of estoppel as applied in Malwa Cotton Spinning Mills Ltd.'s case (supra).

At the resumed hearing today, on a query put forth by us to the learned counsel for the respondents, it could not be successfully disputed that the judgment in the case of Malwa Cotton Spinning Mills Ltd. (supra) would cover the controversy raised in this petition against the respondents. Therefore, we do not propose to undertake any detailed discussion of the issues raised and feel content to

observe that the ratio of the Division Bench judgment in the case of Malwa Cotton Spinning Mills Ltd. (supra) is fully applicable to the present case. Accordingly, instant writ petition is allowed in the same terms and respondent No. 2 is directed to issue redemption certificate asked for by the petitioner. In the circumstances, there is no order as to costs.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

August 31, 2007
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